

NORMAN A BARRON C+ EF MAGISTRATE

STATE OF DELAWARE THE COURTS OF THE JUSTICES OF THE PEACE 820 NORTH FRENCH STREET, 11TH FLOOR WILMINGTON, DELAWARE 19801

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TO:

ALL JUSTICES OF THE PEACE

STATE OF DELAWARE

FROM:

NORMAN A. BABRO

CHIEF MAGISTRATA

DATE:

OCTOBER 15, 1980

RE:

CMI INTOXILIZER

Today, the Honorable Joseph T. Walsh, Associate Judge of the Superior Court, ruled in the case of <u>State v. James J. Mullen</u>, Del.Super., IN-80-07-0400 (1980), that the CMI Intoxilizer is a reliable and trustworthy breath testing device.

Mr. Mullen had been charged with Criminally Negligent
Homicide in connection with a traffic fatality. After the incident,
a blood sample was obtained from the defendant. Shortly thereafter,
he consented to a breath analysis. An analysis of the blood sample
resulted in a reading of .15% BAC. The CMI Intoxilizer showed a
reading of .13% BAC. The time factor would account for the lesser
reading on the CMI Intoxilizer. Judge Walsh made his ruling
primarily on the basis of testimony from an expert witness employed
by the manufacturer of the intoxilizer.

As with other mechanical devices, before the results of same will be admissible in evidence, a proper foundation must be laid. Generally speaking, this foundation will consist of:

- 1. Testimony as to the training and experience of the tester;
- 2. Testimony as to the proper operating condition of the device shown through calibration checks; and
- 3. Testimony that proper testing procedures were employed for the test in question.

A transcript of Judge Walsh's ruling is being prepared and when received will be disseminated to all Justices of the Peace.

NAB:pm

cc: The Honorable Daniel L. Herrmann
 John R. Fisher, Esquire
 Arthur R. Carello
 Files